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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 14th May 2012

No. 3800—li/1(B)-34/2001(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 9th January 2012 in Industrial Dispute Case No. 291 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Samantaray Transport Agency, Paradeep, Contractor Establishment (2) Indian Farmers Fertilizer Co.op. Ltd., Paradeep, Dist. Jagatsinghpur and its workmen Shri Nihar Ranjan Mohanty and 54 others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 291 OF 2008

(Previously registered as I.D. Case No. 49 of 2002 in the file of the
Presiding Officer, Labour Court, Bhubaneswar)

Dated the 9th January 2012

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Managements of

1. M/s Samantaray Transport Agency,
Paradeep, Contractor Establishment.
2. Indian Farmers Fertilizer Co.-op. Ltd.,
Paradeep, Dist. Jagatsinghpur.

First Party—Managements

Its workmen Sarbashri

- 1 Nihar Ranjan Mohanty
- 2 Gunanidhi Das
- 3 Ranjan Choudhury
- 4 Budha Mallick
- 5 Rashmikant Khuntia
- 6 Bhabagrahi Satpathy
- 7 Binoy Kumar Behera
- 8 Ajay Kumar Dalai
- 9 Niranjan Dash
- 10 Prashant Moharana
- 11 Pranab Mohapatra
- 12 Subash Kumar Jena
- 13 Subash Chandra Dash
- 14 Badal Jegenia
- 15 Sameer Swain
- 16 Nrusingha Charan Nayak
- 17 Bharat Rout
- 18 Abhay Dash
- 19 Sudheer Behera
- 20 Jagannath Barik
- 21 Pratap Swain
- 22 Santosh Lenka
- 23 Indramani Sahoo
- 24 Manas Behera
- 25 Purnapa Ojha
- 26 Bidyadhar Dibabagha
- 27 Basant Dash

Appearances :

None

Shri B.C. Bastia
Advocate

Shri T. Lenka, Authorised
Representative.

And

Second Party—Workman

- 28 Kamal Swain
- 29 Dama Swain
- 30 Bansidhar Lenka
- 31 Chakradhar Khatua
- 32 Khageswar Choudhury
- 33 Budhabandhu Behera
- 34 Amulya Pradhan
- 35 Nrusingha Charan Behera
- 36 Prafulla Kumar Samal
- 37 Prahallad Parida
- 38 Prabash Chandra Rout
- 39 Sridhar Rout
- 40 Bibhu Ranjan Parida
- 41 Rabindra Mohanty
- 42 Chakradhar Sahoo
- 43 Dilip Kumar Mohapatra
- 44 Golekh Mahato
- 45 Purna Chandra Sethy
- 46 Ravi Mallick
- 47 Basudev Mallick
- 48 Pravat Kumar Acharya
- 49 Pabitra Kumar Bastia
- 50 Sriraju Nayak
- 51 Pankaj Kumar Sahoo
- 52 Krushna Chandra Das
- 53 Jagarnaba Barik
- 54 Sudhir Behera
- 55 Ajay Kumar Satyabrata Pani

For M/s Samantaray

Transport Agency (First Party No.1)

For M/s IFFCO (First Party No. 2.)

For the Second Party—Workmen

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 4396—li/1(B)-34/2001-L.E., dated the 4th April 2002 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li/21-32/2007-L.E., dated 4th April 2008. The Schedule of reference runs as follows :—

"Whether the action of the management of M/s Samantaray Transport Agency, C/o OSWAL Chemical & Fertilizers Ltd., Musadiha, Paradeep by terminating the services of Shri Nihar Ranjan & 54 others (named above) with effect from the January 2001 is legal and/or justified ? If not, to what relief they are entitled to ?"

2. According to the second party-members/workmen M/s OSWAL Chemical & Fertilisers Ltd., Paradeep (for short, 'OCFL') had recruited them by conducting an interview and engaged them as drivers and helpers to vehicles owned by it and they had worked as such directly under the OCFL for sometime from January 2000 but subsequently OCFL handed over all the vehicles to M/s Samantaray Transport Agency (First Party No. 1) and the second party members were directed to continue in their services as before but they should receive their wages from the Agency. At the relevant time the Agency had no licence under the Contract Labour (Regulation & Abolition) Act, 1970 (for short, 'C.L.R.A. Act'). The second party members continued to discharge their duties till January 2011 by engaging themselves in the transport work of OCFL. In the meanwhile the Agency obtained licence under the C.L.R.A. Act. Though the workmen were discharging duties sincerely and regularly the Agency, in connivance with the OCFL, adopted unfair labour practice by harassing the workmen in different manner. The Agency did not pay their wages regularly. When the workmen demanded for payment of their wages the Agency in connivance with the principal employer i.e., OCFL refused employment to the second party-members. Their services were terminated on different dates in the month of January 2001 but neither any notice was served on them nor the notice pay and compensation amount were paid to them. Since they had completed continuous service of one year in between January 2000 and January 2001, their retrenchment is in violation of the mandatory provisions of the Act.

Further case of the second party workmen is that on their complaint the District Labour Officer Jagatsinghpur issued notice to the principal employer as well as the Agency and during conciliation proceeding both of them had taken part. However, it is alleged, while the reference was made the name of the principal employer was omitted. Being aggrieved, the second party filed a writ petition bearing O.J.C. No. 1600 of 2002 before the Hon'ble High Court for a direction to implead the principal employer as a party to the dispute. The Hon'ble High Court directed them to avail the remedy available to them under the Act. Here, it is pertinent to mention that along with the claim statement a separate petition with a prayer to implead OCFL as a party was filed by the second party workmen. It appears, that application was not taken up by this Tribunal and no order was passed on the impleadment of OCFL as a party. In the meanwhile there occurred transfer of management of the industry and M/s IFFCO Ltd. has taken-over the management and ownership of the industry from OCFL with effect from the 1st October 2005. After such take-over the second party filed a petition before this tribunal to implead M/s IFFCO as a party. This tribunal allowed that petition observing

that IFFCO having taken-over the erstwhile management of OCFL is a necessary party. However, till then the erstwhile management was not a party to this proceeding. When IFFCO was noticed to file written statement OCFL on its own filed written statement on 30-9-2009 even though it was not yet impleaded as a party and the second party's petition to impleaded OCFL was still pending undisposed of. Therefore, this tribunal called upon the parties to make their submission on the undisposed of petition. The matter was heard and the petition was rejected vide order, dated 16-10-2010. Thus, the erstwhile management has not been impleaded as a party whereas the present management who tookover the industry from the erstwhile management has appeared as a party to this case. The Agency has not filed its written statement whereas IFFCO has filed written statement denying its liability.

3. In the written statement filed by IFFCO it is contended that the dispute being of the year 2001-2002 when the management of IFFCO was not in existence, the present management is neither a necessary party nor is concerned with the dispute in any manner. There does not exist employer-employee relationship between the second party members and the present management. The second party-workmen being contract labourers are guided by the C.L.R.A. Act, 1970 and for that the Act has not no application in this case. Since OCFL was not the employer of the second party members the workmen cannot claim any right as against the transferree company which is independent to manage the plant on its own and is not bound to provide employment to the second party members either under any law or in terms of the Sale Agreement under which the present management has purchased the industry.

4. The following issues have been framed :—

ISSUES

- (i) "Whether the action of the management of M/s Samantaray Transport Agency, Paradeep by terminating the services of Shri Nihar Ranjan and 54 others (as per list annexed to the order of reference) with effect from January 2001 is legal and/or justified ?
- (ii) What relief are the workmen entitled to ?

5. One of the second party members has examined himself as W.W. No.1 to adduce evidence on behalf of the workmen. He has proved documents which are marked Exts. 1 to 5 with objection. Since the agency has not participated in the proceeding it has not adduced any evidence. However, IFFCO has examined its Manager (H.R.) as M.W No. 1. No document is exhibited from the side of the management.

FINDINGS

6. *Issue No. (i)* —The present reference is with regard to the legality and/or justifiability of the action of the management of M/s Samantaray Transport Agency in terminating the services of 55 workmen whose names appear in the list enclosed with the order of reference received from the State Government. It is the case of the second party that initially the workmen were appointed by the principal employer, i.e. OCFL in January 2000 but subsequently they were asked to continue in service under the Transport Agency and while so continuing their services were terminated on different dates in the month of January 2001. It is not clarified by the second party as to with effect from which date the second party members worked under the Agency and the date of their respective

retrenchment. However, they have plead that they had completed one year of continuous service. It is their claim that at the time of termination of their services they were not paid notice pay and retrenchment compensation and no statutory notice was served on them prior to their retrenchment.

7. Though notice was served on the agency and the agency had made appearance before this Tribunal, it failed to file the written statement. Therefore, the agency has been set *ex parte*.

W.W. No. 1 in his evidence has adduced evidence on oath on the facts pleaded in the claim statement. So far the agency is concerned, there is nothing to disbelieve the evidence of W.W.No. 1 on the period of their continuous service as well as the manner in which the services of the workmen were terminated. W.W. No. 1 has proved copy of the identity cards and attendances sheets of the workmen showing that they were working under the agency. Since the agency has not challenged the plea taken by the second party the evidence of W.W. No. 1 cannot be disbelieved. Consequently it is to be held that the workmen through had completed one year of continuous service their services were not terminated in accordance with Section 25-F of the Act. For that reason the action of the first party in terminating the services of the second party members is illegal.

8. So far IFFCO is concerned, it is the case of the second party that since the disputant-workmen were employed by the erstwhile management of OCFL and that by way of a kind of unfair labour practice OCFL placed their services under the agency (first party No. 1), the principal employer i.e. the OCFL is liable for the illegal retrenchment and IFFCO being the successor-in-interest of OCFL the second party members are entitled to get relief from the new employer i.e. IFFCO. In this regard it is to be stated that initially the second party members while filing the claim statement had impleaded the agency as the sole first party. Alongw ith their claim statement they had filed a separate petition with a prayer to implead OCFL as a party to this case. That petition was disallowed by this Tribunal vide order No. 58 dated 16-10-2010 with the following observation :

"3. Along with the claim statement the second party members had filed a petition 8-11-2001 (which is under consideration) to implead OCFL as a party to this proceeding. Notice was issued to OCFL to file objection to that petition. None appeared on behalf of OCFL though the notice sent by registered post was duly served. However, no order was passed on the petition to implead OCFL as a party to the proceeding. Subsequently, the second party members filed another petition to implead M/s Indian Farmers Fertiliser Co-op. Ltd. (for short "IFFCO") as a party on the ground that OCFL had been taken over by IFFCO. Notice was served IFFCO to file objection. None appeared on behalf of IFFCO. So, on 19-12-2008 this Tribunal passed order to implead IFFCO as a party to the proceeding observing that IFFCO having taken over the erstwhile management of OCFL it was necessary to implead IFFCO as a party to the proceeding. Thereafter, notice being served on IFFCO to file written statement its representative appeared on 21-7-2009 and after taking some adjournments it filed written statement on 23-11-2009. In the meanwhile on 30-9-2009 OCFL filed written statement through its representative. Since no order had yet been passed on

the petition 8-11-2002 to implead OCFL as a party, this Tribunal passed order on 18-9-2010 to take-up hearing on the said petition to find out whether OCFL can be impleaded as a party. The matter was posted to 30-9-2010 for hearing. On that date none appeared from the side of the first party. Though the representative of OCFL had been appearing in this proceeding, the said representative did not appear on 30-9-2010 to take part in the hearing of the petition. So, this Tribunal heard the representative of the second party on the petition.

3. It is argued on behalf of the second party that the pleadings in the claim statement of the second party having clearly revealed that the workmen were recruited by OCFL and engaged by OCFL to operate its vehicles there should not be any doubt in the mind of the Tribunal that OCFL is a necessary party and in its absence there cannot be an implementable adjudication on the reference. It is true that if this Tribunal goes by the pleadings of the second party, then OCFL will be deemed to be the principal employer of the second party members and for that it should be impleaded as a party. But, it is well settled that the functions of a Tribunal are quasi-judicial and it has no inherent power to decide on all the disputes raised by the parties in their pleadings. Its jurisdiction is limited and restricted only to the issues referred to it by the appropriate Government by an order of reference. In adjudicating upon an industrial dispute, the Tribunal must look at the order of reference itself as it is only the subject matter of reference with which the Tribunal can deal with. The Tribunal must confine the adjudication to the points of dispute referred to it and matters incidental thereto. It is well settled that the jurisdiction of the Tribunal is limited to the matters referred to it the Government and it has no right to travel outside the reference and proceed to adjudicate the matters not referred to it. In *Delhi Cloth & General Mills Co. Ltd. Vrs. Their workmen* (1967) (I) LLJ 423, it is observed by the Hon'ble Supreme Court that the Tribunal can look into the pleadings of the parties to find out the exact nature of the dispute but the parties cannot be permitted to make out an entirely new case than the one which was raised by it and which alone the appropriate Government was persuaded to refer for adjudication. The Tribunal has no jurisdiction to cover all matters which a party might raise before it for the first time. Being alive to the above mentioned settled position of law this Tribunal is to consider as to whether OCFL ought to be impleaded as a party to the present proceeding.

4. It is not shown by the second party that when the dispute was raised before the Labour Officer the second party members had contended that they were directly employed by OCFL to operate the vehicles owned by the latter. Though at the pre-conciliation state OCFL also appeared before the Labour Officer at the conciliation stage the Conciliation Officer did not invite OCFL to take part in the conciliation.

The failure report discloses that during conciliation the second party members had simply alleged that they were working under S. T. Agency who had illegally terminated them since January 2001. Therefore, the plea that OCFL had directly recruited the second party members as its own employees appears to be an after thought plea raised for the first time before this Tribunal. Had it been raised before the Conciliation Officer, the schedule of reference must have contained points on liability of OCFL for the alleged illegal termination. Therefore, merely on the basis of the averments made in the claim statement this Tribunal can not implead OCFL as a party to the proceeding to decide whether the second party members were actually directly employed by OCFL and whether OCFL is liable for the consequences in the event the impugned termination is found to be illegal. Because by doing that this Tribunal will widen the scope of the reference, which is not permissible under law. No doubt, matters incidental to the issues involved in the schedule of reference can be decided by this Tribunal but in the considered view of this Tribunal the issue as to whether OCFL is the employer of the second party members and thereby liable for illegal termination of services, if any, is not a matter incidental to the issue that is involved in the schedule of reference. A point is incidental to another point when the former necessarily depends upon the latter. Matters which require independent consideration and have their own importance cannot be considered as incidental. The present reference has been made by the State Government on an assumption that the second party members were the workman of S. T. Agency. So, the industrial dispute is between the second party members and S. T. Agency. The point as to whether the second party were, in fact, the workmen of OCFL is totally independent of the point on the relationship between the second party members and S. T. Agency. Therefore, this Tribunal is not required to decide the relationship between the second party members and OCFL and for that reason the latter is not a necessary party in the present proceeding."

9. Before disposal of the application to implead OCFL as party this Tribunal had allowed another petition of the second party to implead IFFCO as a party to the dispute and accordingly on being served with notice IFFCO has filed its written statement denying its liability for the alleged illegal retrenchment. IFFCO was allowed to be added as a party on the mere observation that during pendency of the I.D. case IFFCO had taken over the fertiliser plant from the erstwhile management of OCFL. The term of reference is very clear. This Tribunal is required to adjudicate on the action of the agency. It is very clear from the conciliation failure report as well as the schedule of reference that the dispute raised before the labour machinery was with regard to the employment/non-employment of the second party members under the management of Samantaray Transport Agency. Therefore, it is beyond the scope of the reference to make any adjudication on the employer-employee relationship between the Principal employer i.e. OCFL and the second party members.

When this Tribunal is not in a position to make adjudication on the employer-employee relationship between OCFL and the second party members it is not possible on the part of this Tribunal to decide as to whether IFFCO has any liability for the action taken by the Agency in terminating the services of the second party members. Since OCFL is held to be not a necessary party, the present management of IFFCO also cannot be said to be a necessary party in this proceeding.

10. *Issue No. (ii)*—Since the action of the agency is found to be illegal, the second party members are held entitled to get relief from the agency. Each of them had worked under the agency for a period of one year. It is not in evidence as to whether the agency is still in operation. From January 2001 the second party members have not rendered any work for the agency. The second party members are Drivers/Helpers and it is on record as to whether they are not in gainful employment from the date of their termination. There is demand of workmen like Drivers and Helpers and without any evidence it is not possible to believe that they are not in gainful employment. Under such circumstance and keeping in mind the observation of the Hon'ble Supreme Court made in *Ashok Kumar Sharma Vrs. Oberoi Flight Services*, AIR 2010 (SC) 502 the relief of reinstatement with full back wages is found to be inappropriate whereas award of compensation would meet the ends of justice. In the facts and circumstances, compensation of Rs. 10,000 (Rupees ten thousand) only to each of the workmen is found to be just and appropriate. The first party No. 1 i.e. M/s Samantaray Transport agency is held liable to pay the compensation to each of the second party members @ Rs. 10,000 (Rupees ten thousand) only as per the list annexed to the conciliation failure report.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH

9-1-2012

Presiding Officer

Industrial Tribunal

Bhubaneswar

RAGHUBIR DASH

9-1-2012

Presiding Officer

Industrial Tribunal

Bhubaneswar

By order of the Governor

M. R. CHOUDHURY

Under-Secretary to Government